

BRIDGEPORT MUSIC, INC., et al.           )  
  )  
v.   )      No. 3:01-0698  
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EMI APRIL MUSIC, INC., et al.           )      Judge Campbell/Brown

At the outset, the undersigned notes his expectation that full and complete discovery will be had by the parties, and that the exchange of information will be unhindered by trifling objections to reasonably circumscribed discovery requests.<sup>1</sup> Liberal discovery is called for under the applicable Federal Rules of Civil Procedure, and the Court, if it errs, will err on the side of allowing discovery of information arguably relevant to any claim or defense asserted. Accordingly, except where objections are properly made to requests which are plainly

<sup>1</sup> Both sides are asking broad questions which have to be refined and making broad objections which are likewise unnecessary. The parties should realize that there will be full discovery, and get on with the litigation. Again, the parties are requested to ask focused questions that are truly germane to the case, and to provide full answers to all such questions put to them. The trial of this matter will proceed as scheduled by the District Judge, even if discovery on both sides is incomplete.

**This document was entered on the docket in compliance with Rule 53 and/or Rule 79 (a).**

outside the bounds imposed by the discovery rules, or where there is a lack of diligence in reviewing responsive information, the parties should anticipate that motions to compel will generally receive favorable treatment, with any necessary damage control reserved unless and until issues of admissibility arise. That said, the instant motion presents circumstances which require some departure from this general rule.

With respect to Interrogatory No. 1, the motion to compel is denied. Defendants have responded to this interrogatory by providing names, roles with respect to the creation of the song in question, and, where known, last known employers of people with knowledge, and have produced business records known as "song files" to supplement their response and provide other identifying information. This initial production, as supplemented under Fed.R.Civ.P. 33(d) by the song files, appears to be fully responsive to plaintiffs' interrogatory.

With respect to Interrogatory No. 3, the motion to compel is denied, except to the extent the production made does not encompass the period beginning six (6) years prior to the filing of the complaint in this matter.<sup>2</sup> As evidenced by the

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<sup>2</sup> As discussed infra, the undersigned believes that plaintiffs are entitled to discover information dating back to six (6) years prior to the filing of the complaint, absent special circumstances justifying a request for more remote information.

affidavit of defense counsel Robert L. Sullivan, plaintiffs' counsel agreed to accept, subject to review, the documents defendants provided in response to this interrogatory by letter dated September 5, 2001, though those documents were evidently not examined by counsel until after this motion to compel had been prepared. This prior acceptance of documents in response to discovery requests, coupled with the knowledge that such documents awaited counsel's review in the office of defendants' attorneys for over a month before counsel gave them a most cursory review, and then only after a motion to compel had already been prepared, will avail plaintiffs nothing on review of their motion. In fact, this portion of the motion smacks of bad faith. Suffice it to say that plaintiffs will have to be satisfied with the production already made in response to Interrogatory No. 3, except to the extent such production does not encompass the time period beginning six (6) years prior to the filing of the complaint in this matter.

With respect to Interrogatory Nos. 8, 9, and 17, as well as Request for Production Nos. 12-17, 30-35, and 43-45, the motion to compel is granted to the extent that this discovery seeks information from the period beginning six (6) years prior to the filing of the complaint. The undersigned is not persuaded that plaintiffs' discovery should be limited to the three-year

limitations period, as argued by defendants. The existence of a three-year statute of limitations for damages sought does not mean that information from an earlier time could not lead to admissible evidence. The undersigned is likewise unconvinced that plaintiffs' allegations of fraudulent concealment are sufficient to justify unlimited discovery. Accordingly, it appearing that some limitation is necessary in order to facilitate the discovery process, plaintiffs' written discovery should be limited to the period beginning six (6) years prior to the filing of the complaint in this matter, absent a truly special need for more remote information.

With respect to Interrogatory Nos. 4, 5, 11, and 12, defendants represent that they are still in the process of compiling responsive information, and will provide such information when it is available. Accordingly, the motion to compel is denied with respect to these Interrogatories, subject to renewal if such responses are not tendered within twenty (20) days of the entry of this Order.

With respect to Interrogatory Nos. 14 and 15, and corresponding Request for Production Nos. 43-45, the motion to compel is denied, though plaintiffs may of course glean certain responsive information from a review of the documents already tendered by defendants. However, the motion to compel is granted

with respect to requests for prior litigation documents where an EMI defendant has been sued for copyright infringement or sampling by any party, inasmuch as such documents are relevant to the issue of willfulness.

With respect to Request for Production Nos. 36-38, the motion to compel production of any CD inserts and advertising material containing responsive information is granted.

Plaintiff's request for sanctions in the form of attorneys' fees is denied. However, the parties are warned that continued unnecessary bickering may result in sanctions.

The Clerk will post this Order on the Court's webpage, [www.tnmd.uscourts.gov](http://www.tnmd.uscourts.gov), under Bridgeport General Orders, with the title "Order Re: Plaintiffs' Motion to Compel Discovery".

So ORDERED.

  
JOE E. BROWN  
United States Magistrate Judge